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IN THE

Supreme Court of the United States

No. 293

LOUIE COSPER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

PETITION FOR CERTIORARI AND BRIEF AND ARGUMENT FOR PETITIONER AND REASONS UPON WHICH PETITIONER RELIES REQUESTING THE GRANTING OF A WRIT OF CERTIORARI.

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INDEX

Table of Cases.

Ableman v. Booth, 21 Howard 524 23
Anderson v. U.S., 318 U.S. 350 25
Boyd v. United States, 116 U.S. 616 23
Carter v. People, 329 U.S. 173; 67 S. Ct. 216, 218 23
Chicago & Eastern Illinois Railroad Co. v. Hines, 132 Ill. 161, 23 N.E. 1021; 22 Am. St. Rep. 515 25
Connally v. General Const. Co., 269 U.S. 385; 46 S. Ct. 126, 127 23
Creswill v. Grand Lodge Knights of Pythias, 225 U.S. 24 24
Davis v. Wechsilier, 263 U.S. 22, 24 24
DeJonge v. State of Oregon, 299 U.S. 353, 362; 57 S. Ct. 255, 259 ..... 25, 26
Grasse v. Dealers Transport Co., 412 Ill. 179; 106 N.E. 2d 124 25
Hysler v. Florida, 315 U.S. 411; 86 L. ed. 932; 62 S. Ct. 688 30
Italia-American Shipping Corporation v. Nelson, 323 Ill. 427; 154 N.E. 198 25
Johnson v. United States, 87 Fed. 187 ..... 23, 27
Kiawanski v. People, 218 Ill. 481; 75 N.E. 1028 25
Lippman v. People, 175 Ill. 101, 51 N.E. 872 26
Malinski v. New York, 324 U.S. 401 25
McNabb v. U.S., 318 U.S. 332 25
Nash v. United States, 229 U.S. 373; 33 S. Ct. 780, 781; 57 L. Ed. 1232 25
Oulvey v. Converse, 326 Ill. 226; 157 N.E. 245 25
People v. Brown, 336 Ill. 257; 168 N.E. 289, 290 25
People v. Bruner, 343 Ill. 146; 175 N.E. 400 23

People v. Chiafreddo, 381 Ill. 214; 44 N.E. 2d. 888 24
People v. Cosper, 405 Ill. 543, 92 N.E. 2d. 173 ....24, 30, 31
People v. Day, 321 Ill. 521; 152 N.E. 495 24
People v. Ford, 357 Ill. 572; 191 N.E. 315 28
People v. Goldberg, 287 Ill. 238, 122 N.E. 530 31
People v. Green, 368 Ill. 242; 13 N.E. 2d. 278 .....23, 25, 31
People v. Martin, 382 Ill. 192; 46 N.E. 2d. 997 28
People v. Plocar, 411 Ill. 141; 93 N.E. 2d. 434 .....24, 30
People v. Plocar, 341 Ill. 141; 103 N.E. 2d. 612 29
People v. Prall, 314 Ill. 518, 145 N.E. 2d. 610 26
People v. Rosenthal, 370 Ill. 244, 18 N.E. 2d. 450 24
People v. Russell, 245 Ill. 268; 91 N.E. 1075 25
People v. Terrill, 362 Ill. 61, 199 N.E. 97 24
People v. Weber, 355 Ill. App. 250; 81 N.E. 2d 5.....24, 30
Pettibone v. United States, 148 U.S. 197; 37 L. ed. 419.. 26
Terminiello v. Chicago, 337 U.S. 1 29
Thompson v. People, 102 N.E. 2d. 315 23
United States v. Carll, 105 U.S. 611, 612 25
United States v. Cruikshank, 92 U.S. 542 25
United States v. Hess, 124 U.S. 843; 31 L. ed. 516..... 26
United States v. Reese, 92 U.S. 214 .....25, 31
United States v. Simmons, 96 U.S. 360; 24 L. ed. 819.. 26
United States v. Thuread, 20 Fed. 621 27
Wallham v. Ingersoll, 117 Ill. 123, 7 N.E. 519 .....25, 27, 28
Ward v. Love County, 253 U.S. 17, 22 23

STATUTES.

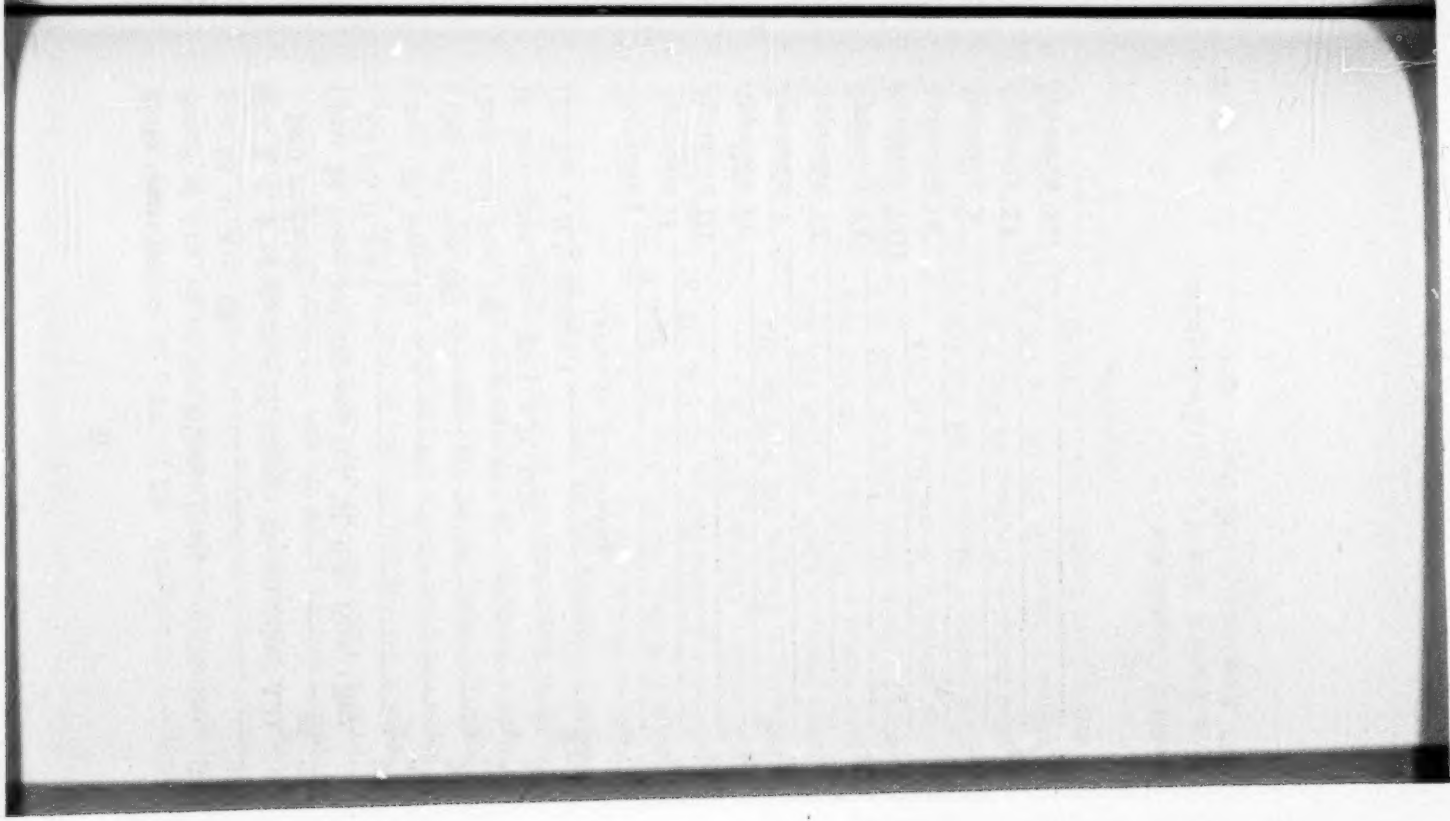
Federal Constitution
Secs. 2 and 3, Art. VI, U.S. Constitution;
XIV Amendment, U.S. Constitution 29, 31, 32

State Constitution

Sec. 8 of Art. VI of the Illinois State Constitution.. 25
Sec. 33, of Art. VI 27
Sec. 2, 6, 9 of Article II Illinois Constitution A.D. 1870 Statutes 25, 26
Chap. 38, Secs. 100, 103 and 104, Ill. Rev. Stat. (Bar. Ed.) A.D. 1953 28
Chap. 37, Sec. 13 25
Chap. 37, Sec. 382 26
Chap. 110, Sec. 199 26
Ill. Rev. Stat. (Bar Ed.) A.D. 1953 26
(Pl. Ex. I R.I. #33304) R.p.1

INDEX TO APPENDICES.

Appendix I 35
Appendix II 40
Appendix III 45
Appendix IV 48
Appendix V 50
Appendix VI 51
Appendix VII 53
Appendix VIII 56
Appendix IX 57
Appendix X 57
Appendix XI 58
Appendix XII 58



IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

LOUIE COSPER,

Appellant,

vs.

STATE OF ILLINOIS,

Appellee.

NOTICE OF APPEAL FROM STATE COURT, CRIMINAL CASE.

Notice is herey given tLat Louie Cosper, the Appellant, above named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the State of Illinois, affirming the judgment of conviction, entered herein on January 23, A.D. 1953, in the Municipal Court of Chicago, State of Illinois.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

The Appellant was convicted of the crime of contributing to the delinquency of minor children in violation of Sec. 104, Par. 2, Chap. 38, of the Ill. Rev. Stat. (Bar Edition) A.D. 1953, and was sentenced to a term of ninety (90) days confinement at hard labor, in the House of Correction, in the City of Chicago, County of Cook and State of Illinois, and that the applicant is presently enlarged on bail in the sum of $500.00.

History of the Case.

Your petitioner, on the 6th day of March, A.D. 1953, was sentenced on a judgment, entered on the verdict of a jury returned in the Municipal Court of Chicago, on the 23rd day of January, A.D. 1953, directing the petitioner to suffer imprisonment for a period of ninety (90) days to be served in the House of Correction, in the City of Chicago, County of Cook and State of Illinois. (R. 12 #33304)

Motions for a new trial and arrest of judgment were timely presented, showing as grounds, that the petitioner's Federal and State Constitutional rights under "Due Process of Law" as guaranteed to every citizen in a criminal, or quasi-criminal action under the laws of Illinois have been violated and denied to your petitioner by the Trial Court. The Constitutional errors urged on a rehearing before the Trial Court, were summarily overruled, denied, and preserved of record. (R. 12, #33304)

The petitioner subsequently enlarged on bail, removed the cause by writ of error to the Appellate Court, First District, of Illinois, expressly reserving and presenting Federal and State Constitutional rights denied him by the trial court, and preserved for review to the reviewing courts, for a determination as guaranteed by the XIVth Amendment to the Constitution of the United States, and as guaranteed by the laws of Illinois and the Constitution of the State of Illinois, A.D. 1870.

The violations as charged to the petitioner, under the Statute of the State of Illinois is a misdemeanor.

MISDEMEANOR.

Chap. 38, Sec. 586 Ill. Rev. Stat., (Bar Edition) A.D. 1953, Vol. I, p. 1434:

> "**Misdemeanor.** 6. Every other offense is a misdemeanor. Where the Performance of any Act is prohibited by statute, and no penalty for violation of such statute is imposed, the doing of such act is a Misdemeanor, and may be punished by fine not exceeding $100 or imprisonment in the county jail not exceeding six months, or both in the discretion of the Court."

By judicial decree, the Supreme Court of Illinois has ruled, where cases are taken to the Appellate Courts wherein errors are assigned, of which that court has jurisdiction, the party so suing out the writ of error is deemed to have waived all constitutional questions involved. (Appendix I). (See *People* v. *Rosenthal,* 370 Ill. 244; 18 N.E. 2d 450.) [1]

In the alternative, by the Statute, Chap. 110, Par. 259.47 (Bar Edition) A.D. 1953, and Rule 47 of the Supreme and Appellate Courts of Illinois, Ill. Rev. Stat., A.D. 1953, Vol. 2, p. 529, provide:

> "If any cause is appealed to the Supreme Court which should have gone to the Appellate Court, or visa versa, it may be transferred to the proper court on motion, and upon an order for transference being made, all documents already filed in the wrong court, shall be transmitted by the Clerk to the proper court, and the case shall proceed from that point in all respects as though an appeal had originally been taken to the proper court."

The petitioner by stipulation with the State, removed his first appeal by writ of error to the Supreme Court of Illinois, in the November Term, A.D. 1949. The errors

assigned involved a substantial denial of Federal and State Constiutional rights. The court's ruling excluded and ignored the stipulation of the State and the defense. The Supreme Court on March 22, A.D. 1950, holding that no constitutional questions were presented for determination, ordered the cause tranferred to the Appellate Court, First District, Illinois. (Appendix III).

The petitioner timely filing his petition for rehearing. The rehearing was denied on May 15, 1950. *People* v. *Cosper*, 405 Ill. 543, 92 N.E. 2d. 173.

Your petitioner on reason, being hamstrung by the ruling of the Supreme Court in the *Cosper* case (*supra*), rejecting Federal and State claims, adjusted himself to remove the instant cause as the first step to the Appellate Court, First District, of Illinois, and there expressly reserved as errors for determination, a substantial denial of Federal and State Constitutional rights. (R. 79-82 #33304).

Your petitioner removed the cause to the Appellate Court, seeking a determination of his Constitutional questions, as a second step, timely, by notice, moved the court to transfer the cause to the Supreme Court under Rule 47; the State did not object, yet the Appellate Court without reason or comment, rejected and denied the motion to transfer the cause.

The opinion of the Appellate Court rejecting the Federal and State Constitutions claim, re-examined a few basic assumptions and thereupon adjusted itself by affirming the court below. (Appendix II). Your petitioner moving the court for a rehearing, being denied, thereupon removed the cause on Writ of Error to the Supreme Court. The Court there sustaining *in toto* the Appellate Court, rejecting the claim of your petitioner's Federal and State

Constitutional rights, being denied, held, in substance, that by proceeding in the Appellate Court, your petitioner waived all Constitutional questions and rights there presented for review. (Appendix I).

The question here presented is, where an appeal is removed to the Supreme or Appellate Courts of Illinois, can these State courts by rule of procedure, in the face of the XIV Amendment, reject and exclude all Federal and State Constitutional claims and deny to an appellant a right to such a determination under "due process of law"?

WHEREFORE, your petitioner respectfully prays, that upon application of his petition for a writ of *certiorari*, supported by his brief and argument, that the writ of *certiorari* may be issued out of and under the seal of this Honorable Court for its review and determination of the errors complained of, grounded on the trial records:

(a) Supreme Court of Illinois #31350, November Term, A.D. 1949, and (b) Supreme Court of Illinois #33304, November Term, A.D. 1954, titled and docketed, *People* v. *Cosper*.

Respectfully submitted,

LOUIE COSPER,
Appellant and Petitioner.

By: HERBERT W. WETZEL,
ARTHUR FRANKEL,
DEMETRI M. SPIRO,
Attorneys for Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1955.

No.

LOUIE COSPER,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI

To: The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

Your petitioner, Louie Cosper, respectfully shows unto this Honorable Court as follows:

I.

STATEMENT OF MATTERS INVOLVED HEREIN

This is a quasi-criminal action, originally brought after the arrest and detention of your petitioner as the accused subject for an investigation, while the petitioner was within the peace of the people.

The arrest of petitioner by the Police of Chicago on the 10th day of September, A.D. 1948, took place without authority, and without process of a warrant. (Tr. 55, 56).

Following the arrest and after being enlarged on bail, the petitioner on the 13th day of September, A.D. 1948, was charged under several complaints on information filed with the Clerk of the Municipal Court of Chicago, by the mothers of the girls, each aged 10 years. One information charged that the defendant, on the first day (1st) of September, A.D. 1948; the other information, that on the second day (2nd) of September, A.D. 1948, the defendant did unlawfully, knowingly and willfully encourage their daughters, severally, on the days mentioned to become delinquent children by the commission of certain acts as set out in the informations and in violation of Sec. 104, Par. 2, Chap. 38, of the Ill. Rev. Stat. 1947. (R. 3, 10 Pl. Ex. 1 #31350 1949)

Your petitioner waived trial by a jury. On trial by the court, he was found guilty under both informations and was sentenced to the House of Correction of Chicago for a period of one (1) year. The causes, by stipulation, were consolidated, and removed on Writ of Error to the Supreme Court of Illinois, November Term, A.D. 1949. (R. #31350, A.D. 1949).

The cause was there reviewed. The Court held, that the record did not disclose, that a constitutional question was raised, or decided by the trial court. Rehearing denied May 15, 1950. Therefore, it ordered the cause transferred to the Appellate Court, First District Illinois. 405 Ill. 543, 92 NE 2d 173.

The Appellate Court, First District, of Illinois, June 29, 1951, upon a petition for rehearing reversed the cause

on the complaint, Mrs. James Kafesjian, filed in behalf of Yvonne Kafesjian, aged 10 years, and reversed and remanded the complaint of Mrs. Ann Maier, filed in behalf of Joanne Maier, aged 10 years, for a new trial (Abst. opinion) 92 NE 2d 837. The cause on retrial was set for trial by jury. (R. 5-8 #33304, see: Appendix III).

Petitioner before the succeeding trial by jury, again challenged the information of Mrs. Ann Maier on behalf of Joanne Maier, the Prosecutrix, on motion to strike and quash, assigning errors, specifically invoking Federal and State Constitutional questions. (R. 2-5 #33304). On hearing argument of respective counsel, the trial court overruled and denied the motion to strike and quash, the complaint. (R. 9 #33304).

The cause proceeding to a second trial, January 23, 1953 (R. 9 #33304) a jury found the defendant guilty, and directed the defendant be sentenced to the House of Correction in Chicago, for a period of Ninety (90) days. (R. 10 #33304). Defendant then moved for a new trial and arrest of judgment. The respective motions upon hearing, by the court were overruled, denied and preserved of record. (R. 11-13 #33304).

Your petitioner then moved on Writ of Error, to the Appellate Court, First District, of Illinois, December Term, A.D. 1953, assigning as errors, that the petitioner's rights had been denied as guaranteed under Secs. 2-6 and 9, of Article II, and Sec. 13 of Article IV, of the Illinois State Constitution of A.D. 1870, and the trial court having further denied and violated the petitioner's rights, under "due process" of the XIVth Amendment to the Constitution of the United States. (R. 72-74 #33304).

CHILD DELINQUENCY.
MISDEMEANORS.

The statutory crime of contributing to the delinquency of children, Chap. 38, Sec. 100, 103, Ill. Rev. Stat. A.D. 1953, Vol. I, pp. 1315-16 (Bar Edition) is a misdemeanor (See Appendix IV), under judicial decree of Illinois Supreme Court, and under the interpretation of Sec. 199 (Chap. 110, Ill. Rev. Stat. A.D. 1953.) Bar Edition [Civil Practice Act.] (See Appendix VI). Such misdemeanors are directed to be appealed to the Appellate Court of Illinois. See: *People* v. *Rosenthal*, 370 Ill. 244 18 N.E. 2d. 450, [1].

Your petitioner filed the Writ of Error in the Appellate Court First District, as directed to misdemeanors, and timely invoked Rule 47, to transfer the cause under the rules of the Supreme Court and Appellate Court, A.D. 1953. (R. 80-82 #33304) on the grounds, that Federal and State Constitutional questions were presented, pertinent, and directly involved, not waived, or to be waived, or considered to be waived by the Appellate Court, First District, of Illinois. (R. 81-82 #33304), under:

RULE 47

(Chap. 110, Par. 259.47, (Ill. Rev. Stat. 1953). Vol. 2, p. 529.

TRANSFERRED CAUSES

> "If any cause is appealed to the Supreme Court which should have gone to the Appellate Court, or vice versa, it may be transferred to the proper court on motion, and upon an order for transference being made all documents already filed in the wrong court shall be transmitted by the clerk to the proper court, and the case shall proceed from that point in all respects as though the appeal had originally been taken to the proper court."

Your petitioner's motion timely and expressly invoked and maintained his rights, under Federal and State Constitutions to transfer under Rule 47, assigned as grounds for tranfer (R. 80-82, #33304):

(a) Right for a determination, Federal and State Constitutional questions raised preliminary to the trial.

(b) Rights, invoking Federal and State Constitutional protection during the trial.

(c) The motion to transfer the cause under Rule 47, specifically urged for determination, defendant's guaranteed rights under our Federal and State Constitutions as preserved of record and violated throughout the trial. The violations were urged for determination on constitutional grounds by timely and proper notice to the Appellate Court, as grounds for transfer under Rule 47. (R. 80-82 #33304).

(d) That on notice to the Appellate Court, the defendant steadfastly maintained that he does not waive, nor should the Appellate Court consider that he has waived any of his constitutional rights to be determined, as guaranteed to him under our Federal and State Constitutions. The motion to transfer under Rule 47, was summarily denied without comment by the Appellate Court, First District. (R. 79-82 #33304).

The Appellate Court, First District, December Term, A.D. 1953, on reviewing the cause solely confined its opinion to the merits, and affirmed the Judgment of the Court below, on basic assumptions, holding that by petitioner's challenging the validity of the judgment on constitutional grounds, in the Appellate Court, petitioner had waived his Constitutional rights, under the ruling opinions of the Supreme Court of Illinois. (Appendix II).

Rehearing denied April 21, A.D. 1955, Ill. App. 2d, 468, 118 NE 2d 639. Abst. Opinion (see Appendix III).

Your petitioner then proceeded to the Supreme Court of Illinois, by a Writ of Error, directed to the opinion of the Appellate Court, First District, Appendix I, chiefly assigning as error a substantial denial of "Due Process of Law" by the Trial and Appellate Courts under the guarantees of our Federal and State Constitutions, and there expressly invoking a substantial denial of his opportunity to be heard on the issues of Constitutional Rights, Federal and State preserved of record, as provided by the statute to transfer, including Rule 47, of the Illinois Supreme and Appellate Courts Rules, A.D. 1953. (R. 80-82).

The Supreme Court of Illinois, reviewed the cause. The opinion filed January 21, 1953, affirmed the Appellate Court, First District, by holding, that while it was asserted, that the Appellate Court wrongfully denied Petitioner's motion to transfer the cause to this Court in accordance with Rule 47, Ill. Rev. Stat. 1953, Chap. 110, Par. 259.47 Vol. 2, p. 504, (Bar Edition), which provides:

TRANSFERRED CAUSES

"If any cause is appealed to the Supreme Court which should have gone to the Appellate Court, or vice versa, it may be transferred to the proper court on motion, and upon an order for transference being made all documents already filed in the wrong court shall be transmitted by the clerk to the proper court, and the case shall proceed from that point in all respects as though the appeal had originally been taken to the proper court,"

the Supreme Court's opinion under this provision in the instant case held:

> "When cases are taken to the Appellate Court wherein errors are assigned of which that court has jurisdiction, the party so suing out the Writ of Error is deemed to have waived all Constitutional questions involved." (Appendix I).

Your petitioner filed his petition for a rehearing setting forth his reasons in two sections: Sec. I, The Appellate Court, affirming the judgment of the Trial Court, relate to a violation of your petitioner's Federal and State Constitutional rights and immunities; and Sec. II, the opinion of the Appellate Court, affirming the judgment of the trial Court, are in (a) conflict with the applicable and controlling decisions of the United States Supreme Court; (b) in conflict with this court's own earlier decisions; (c) in conflict with the applicable local law, controlling in cases of child delinquency; (d) and the instant decision of this court, has radically departed from the accepted and usual course of judicial proceedings, and thereby sanctioned such departure by the Trial Court below violative of the XIV amendment. Petition for Rehearing, denied, March 22, A.D. 1955. 5 Ill. 2d 97, 125 NE 2d 66.

Although this case presents no new or undecided questions, it still remains that the state courts and the reviewing courts of Illinois have rejected and refused to grant the petitioner "Due Process of Law", by, the protection of which, he is entitled therefore under the XIVth Amendment to the Constitution of the United States. That it therefore becomes necessary to once again invoke the power and authority of this court under Secs. 2 and 3, of Art. VI, and the XIVth Amendment to the Constitution of the United

States, in order to obtain the privileges, immunities, and rights guaranteed to the petitioner under and by the Constitution of the United States.

THE JUDGMENT TO BE REVIEWED.

The judgment on the verdict of the jury entered January 23, A.D. 1953, (R. 9, #33304 under docket #46274) removed by writ of error to the Appellate Court, First District, Illinois, December Term, A.D. 1953. There the judgment of the Trial Court was affirmed. (Appendix II). The cause then removed to the Supreme Court of Illinois, November Term, A.D. 1954. The Supreme Court under docket #33304 affirmed the Appellate Court, January 21, A.D. 1955. Rehearing denied March 22, A.D. 1955, (Rec. #33304). (Appendix I).

THE QUESTIONS PRESENTED FOR REVIEW.

(a) Where the State Court has decided a Federal question of substance, not heretofore determined by this Honorable Court, or has decided it in a way probably not in accord with the applicable decisions of this Honorable Court.

(b) Where a court of appeals has rendered a decision in conflict with the decisions of another court of appeals on the same matter.

(c) Where the court of appeals has decided an important state question in a way in conflict with the applicable decisions, and the State law.

(d) Where the court of appeals has decided an important question of federal law which has not been, but should be settled by this Honorable Court.

(e) Where the court of appeals has decided a federal question in a way in conflict with applicable decisions of this Honorable Court.

(f) Where the court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court as to call for an exercise of this Honorable Court's power of supervision.

THE JURISDICTION

The jurisdiction of this Honorable Court is invoked pursuant to Sub-sec. (2) of Sec. 1257, Title 28, of the U.S.C. Ann. to review by *certiorari*, the final judgments of the highest courts of the States, in causes in which the rights of its citizens have been asserted to have been violated and denied to them under the Constitution of the United States and Constitution of the State.

The petitioner has asserted throughout and maintained a violation and denial of his Federal and State Constitutional rights, by writ of error, filed in the reviewing courts of Illinois, claimed under Sec. 1, of the XIVth Amendment. and Secs. 2-3, of Art. VI, of the Constitution of the United States, upon the grounds that the judgment order was there reviewable. These claimed violations were rejected, excluded and denied to the petitioner in and by the reviewing courts of Illinois, and reviewable in and by this Honorable Court, within the purview of Sub-sec. (2) of Sec. 1257, Title 28, of the U.S.C. Ann.

THE CONSTITUTIONAL PROVISIONS AND THE STATE STATUTES HEREIN INVOLVED.

The constitutional provision, here preserved of record, involve:

(a) Violations and denials of Secs. 2, 6 and 9 of Art. II, Appendix X, and Sec. 13 of Art. IV, Appendix IX, and Sec. 33 of Art. VI, Appendix XII, of the Constitution of the State of Illinois of 1870;

(b) The violation and denial of protection under Sec. 382, Par. 27, Chap. 37, Ill. Rev. Stat. Vol. I, p. 1258 (Bar. Ed.) A.D. 1953, Appendix VI;

(c) The violation and denial of protection under Secs. 100 and 103, of Chap. 38, Ill. Rev. Stat. Vol. I, pp. 1368-1396, Appendix IV;

(d) A violation of Sec. 104, (Penalty Clause), Appendix V;

(e) A violation and denial of protection under Secs. 657, 660, 663 and 664, Division VII, Chap. 38, Ill. Rev. Stat. (Bar. Ed.) 1953, Vol. I, pp. 1450-1451, Appendix VIII;

(f) A judicial fiat, by judicial decrees, violative of Sec. 199, Chap. 110, (Illinois Practice Act) 1953, Ill. Rev. Stats. (Bar. Ed.) 1953, Vol. II, pp. 511-512, Appendix VII;

(g) As being contrary to and violative of Section 2, of Art. II, Illinois State Constitution of 1870, and repugnant to, and violative of both Sections 2 and 3 of Article VI, and of the XIVth Amendment to the Constitution of the United States.

THE REVIEW ON WHICH THE JUDGMENT OF THE STATE COURTS SOUGHT.

The plaintiff's method of raising the state and federal questions in the State Courts of Illinois, sought here to be reviewed as they appear in the record, #31350, November Term, A.D. 1949, and Record #33304, December Term, A.D. 1953, are:

In the trial record #31350:

(a) By a motion to suppress and quash the proceedings; motion denied. (R. pp. 5-6).

(b) Motions for new trial in arrest of the judgment; motions denied. (R. p. 7).

(c) By assignment of errors in the reviewing court; excluded and denied. (R. pp. 48-52).

In trial record #33304:

1. By motion to quash and strike the complaint and information; motion denied. (R. pp. 2-5).

2. By motions for a new trial and in arrest of the judgment; motions denied. (R. pp. 10-12).

3. By given instructions to the jury; offered by the defendant, and refused. (R. p. 65-72).

4. By assignment of errors in the reviewing court; excluded and denied. (R. pp. 72-74).

5. By assignment of errors in the Appellate Court, First District, Illinois; excluded and denied. (R. p. 84).

6. Motion to transfer the cause from the Appellate Court to the Supreme Court, under Rule 47 of the Supreme Court; refused, denied and excluded. (R. pp. 79-82).

The respective records show, that federal and state questions were timely and properly raised and preserved of record at the first step of the proceedings and carried on throughout the proceedings, so as to give jurisdiction to this Honorable Court to review the judgment on writ of certiorari, pursuant to 28 U.S.C. Ann. 1257 (2).

THE QUESTIONS PRESENTED ON THE RECORD.

1. Can the actions of a state trial court and the opinions of the reviewing court of last resort, by custom-made rules, deny to a citizen accused of the commission of a crime, the equal protection of the laws, within the purview of Sec. 1, of the XIVth Amendment to the Constitution of the United States?

2. Can the actions of a reviewing court, by custom-made rule, deny and refuse to determine substantial federal and state constitutional rights properly and timely presented by its citizens in reviewing criminal causes, under Section 1, of the XIVth Amendment to the Constitution of the United States.

3. Can the judges of any reviewing court, in any manner limit or in any way affect the binding force of the plain intendment of Sections 2 and 3 of the Sixth Article of the Constitution of the United States, without violating their own oaths under Sections 2 and 3, of the Sixth Article of the Constitution of the United States?

4. Can a state legislature, under the tripartite division of government, by the enactment of legislation (Chap. 110, Sec. 199, pp. 511-512, Ill. Rev. Stats., A.D. 1953).

(a) Deprive and deny to the judges of an Appellate Court by their own sworn duty under Art. VI to support the constitution to pass upon and determine federal and state constitutional questions?

(b) To confer and confine by limitation that right by legislative enactment upon only judges of the Supreme Court of a State, and all *nisi prius* judges of the State, but restraining Appellate court judges?

(c) Can a State Court of last resort indirectly avoid to determine, federal and state constitutional rights of its citizens, properly and timely presented for review, where the constitutions, federal and state, by mandate commands the reviewing courts to follow and obey that right directly?

5. Can the judges of a state supreme court, by custom-made rule and judicial decree, confer the right on the judges of the appellate courts to waive all appellant's constitutional questions in a criminal cause assigned as error to the court below in the face of the XIV Amendment?

6. By what constitutional authority or interpretation can a state legislature deprive judges of a state appellate court, of the duty and power to implement the individual oaths of judges of the Appellate court, specified in Article VI of the federal constitution, and this practice be sanctioned by custom made rules wrongfully and arbitrarily adopted by the supreme court of a state?